

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on January 10, 2019
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Christopher Jessup, Administrative Law Judge
Kerry Lewis, Administrative Law Judge

MINUTES OF December 19, 2018 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the December 19, 2018 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the December 19, 2018 Board meeting. The vote was 3-0.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Lowry announced that Julie Su is the new Secretary of Labor. Mr. Lowry also discussed a recent bill introduced in Congress to put air conditioning in postal trucks as the result of a death of a postal worker.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

ACTION: Executive Officer Hapgood announced the vacant position for Hearing Officer I is posted online. The final filing date for the position is January 28, 2019.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. REGULATIONS:

A. Discussion on proposed changes to regulations 359.1, 361.3, 372.2, and 372.9 concerning (1) changes to rules regarding docketing and perfecting an appeal, (2) changes to rules regarding employer provision of the citation package, (3) changes to rules regarding subpoenas, allowing attorneys to issue subpoenas and providing the board time to process subpoena requests, and (4) repeal of rule 372.9 requiring the Division's automatic production of evidence. Review of associated proposed rulemaking documents, including draft of ISOR and Notice.

2. LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: Administrative Law Judges Kerry Lewis and Christopher Jessup congratulated Mr. Lowry on his appointment as Chair of the Appeals Board.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1151085 CORE EMPLOYEE MANAGEMENT INC.
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1059365 SHIMMICK CONSTRUCTION COMPANY INC
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1199167 ENVIRONMENTAL WASTE MINIMIZATION INC.
 ACTION: Granted
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1250102 TMC CONSTRUCTION
 ACTION: Denied
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

PETITIONS FOR RECONSIDERATION (Second Review):

1084531 KS INDUSTRIES, L.P.
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

ORDERS DISMISSING APPEAL:

1265493 INH CORPORATION
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1312270 CLAYCO, INC.
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1318467 TMC GENERAL CONSTRUCTION, INC.
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

1317404 VALLARTA SUPERMARKETS
 ACTION: Approved
 Moved: Judith Freyman, Seconded: Ed Lowry
 Vote: 2-0

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

1180499 ALPHA CONSTRUCTION COMPANY, INC.
317230919 BIGGE GROUP DBA BIGGE CRANE & RIGGING CO.
1141604 BOY RACER INC. DBA BURNING ANGEL
 (EMPLOYER'S PETITION)
1141604 BOY RACER INC. DBA BURNING ANGEL
 (DOSH'S PETITION)
1205214 CALIFORNIA STRUCTURAL CONCEPTS INC.
1246527 CEMEX
316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
1129260 ENVIRONMENTAL CONSTRUCTION GROUP
1240360 HARRIS SPICE COMPANY
315341818 HHS CONSTRUCTION
1071914 JOSEPH PERALTA

1192145	KPRS CONSTRUCTION SERVICES, INC.
1200875	NATIONAL RETAIL TRANSPORTATION, INC.
1116151	NORM WILSON & SONS INC.
1201848	PAPICH CONSTRUCTION COMPANY, INC.
1183505	PERFORMANCE TEAM FREIGHT SYSTEMS
1116095	SOUTHERN CALIFORNIA EDISON
1193994	SUNVIEW VINEYARDS OF CALIFORNIA, INC.
1097751	TIMBERWORKS CONSTRUCTION, INC.
1253345	TYP RESTAURANT GROUP, INC. DBA TENDER GREENS
1116529	UNITED PARCEL SERVICE, INC. DBA UPS
1200858	WESTERN DIGITAL CORPORATI

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
34-2014 80001749 (2008-R2D1-3414 through 3418)
2. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 through 3098)
3. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572
through 0574)
4. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
5. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (12-R3D1-0781)
6. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
7. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)

8. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
9. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454
(314863978)
10. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
11. KEY ENERGY SERVICE, LLC 12004280
12. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
13. ATKINSON CONSTRUCTION, LP (317386084)
14. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
15. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
16. LION FARMS, LLC 1070258, MCV075788
17. ELECTRICAL SYSTEMS & INSTRUMENTATIONS, INC. (316695469)
18. UNITED PARCEL SERVICE, BS171154 (315347864)
19. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
20. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910, (1111325)
21. EXXONMOBIL OIL, BS172600 (1091462)
22. SSA CONTAINERS, INC. (314758756)
23. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
24. BULKLEY & ASSOCIATES, LLC, CV43751 (1052467)
25. BLUE DIAMOND GROWERS, (1040471)
26. UNITED PARCEL SERVICE, (1158285)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. NOLTE SHEET METAL, INC., 16CE CG03592 (14-R6D8-2888 through 2783)
3. VENTURA COASTAL, F077267 (317808970)
4. HOME DEPOT, U.S.A., INC. 48C1710947 (1011071)
5. AVALON BAY COMMUNITIES, INC., G056506, 30-2016-00872036 (317232965)
6. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683, CIVDS1716416,
(1014901)
7. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1313982	AGRI SOLUTION, INC.
1287610	AGRI-WORLD COOPERATIVE
1305954	ALL AIR CONDITIONING COMPANY, INC.
1313399	ALTMAN SPECIALTY PLANTS, INC.
1275740	AMERICAN FURNITURE RENTALS, INC.
1340215	AMERICAN NATIONAL MANUFACTURING, INC.
1212067	AMERICAN TIRE DISTRIBUTORS, INC
1182048	ANA LIA MEDINA
1284896	ANGELICA TEXTILE
1287295	ANTONIO'S TREE SERVICE
1305928	ART CONSTRUCTION
1326124	ARTURO & ALICIA SANCHEZ
1283962	BASHADI INC.
1315064	BEAR VALLEY USD - BALDWIN LANE ELEMENTARY SCHOOL
1228235	BERGELECTRIC CORP.
1285542	BKD TWENTY-ONE MANAGEMENT COMPANY, INC.
1327197	BLOW MOLDED PRODUCTS, INC.
1300327	BOBBY O. HAYNES SR. AND CAROL R. HAYNES FAMILY
1246116	CA DEPT. OF CORRECTIONS AND REHABILITATION - LA CIMA
1170627	CA FORESTRY & FIRE PROTECTION DBA CAL FIRE

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1210899	CA TRANSPORTATION
1319461	CALIFORNIA DYNAMICS CORPORATION
1325579	CALIFORNIA STATE UNIVERSITY LOS ANGELES
1286488	CAPSTONE CONTRUCTION COMPANY LLC
1280747	CARDENAS MARKETS LLC
1276239	CARDOZA DRYWALL INC
1292162	CITISTAFF SOLUTIONS, INC.
1299110	CITY OF IRVINE - THE GREAT PARK
1236081	CONSERVE LANDCARE, INC.
1189656	CRAWFORD BROS., INC.
1260531	D & S PAINTING, INC.
1302793	DAVID MALDONADO
1269086	DEMATIC CORP.
1316850	E & J GALLO
1280746	EMPIRE BUILDING AND REMODELING, INC.
1199167	ENVIRONMENTAL WASTE MINIMIZATION INC.
1270925	ETHOS ENERGY FIELD SERVICES
1310193	EXPRESS EMPLOYMENT PROFESSIONALS
1314381	EXPRESS EMPLOYMENT PROFESSIONALS
1333884	FOWLER NURSERIES, INC.
1314919	FRANK MARTINEZ CONSTRUCTION, INC.
1328725	FREEDOM FOREVER LLC
1297653	FRONTIER-KEMPER CONSTRUCTORS, INC.
1252547	GARDA WORLD CASH LOGISTICS - FRESNO BRANCH 29
1251946	GAVRIELI PLASTICS, METALS & SIGNS SUPPLIES
1334263	GFG MANAGEMENT
1356140	GHEEN BUILDERS, INC.
1248755	HELADOS LA TAPATIA
1244826	HILLCREST SHEET METAL, INC.
1324009	IT'S A WONDERFUL WORLD, INC
1330960	JOLLY GIANT FLEA MARKET, INC.
1302007	JOSE ALBERTO SOLANO
1347852	JOSH MOORE CONSTRUCTION, INCORPORATED
1317497	JT2 INC.
1316533	JT2 INC. DBA TODD COMPANIES
1305568	KENNETH DEVELOPMENT, INC.
1327921	KINDRED HOSPITAL
1337879	LA REALTY GROUP LLC
1272209	LOS ANGELES COUNTY FIRE DEPARTMENT
1286403	LUXVUE LTD
1055629	MAGGIORA AND GHILOTTI INC.
1083825	MAGNA TOOL INC
1317499	MARICELA MADRIGAL
1140602	MARK CRAWFORD LOGGING, INC.
1332193	MARK HOLMAN AN INDIVIDUAL

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1314246	MARQUEZ BROTHERS INTERNATIONAL, INC.
1320697	MARUICHI AMERICAN CORPORATION
1306919	MIKE JACKSON FARMS, INC.
1307224	MSA TERMITE SYSTEMS
1227637	NATIONAL COMMUNITY RENAISSANCE
1297223	NP MECHANICAL CO.
1312979	OSVALDO DANIEL GUTIERREZ ESCAMILLA
1328118	PACIFICA CHINO HILLS LP
1307831	PACIFICA L 24 LLC
1325207	PALA MESA RESORT, INC.
1332989	PARAGON FRAMING INC
1182521	PARK WEST LANDSCAPE MAINTENANCE, INC.
1328892	PATRICK INDUSTRIES, INC.
1291318	PEEK BROS., INC.
1339806	PIONEER STAR GROUP, INC.
1319676	PLEASANT PAPER RECYCLING INC.
1317428	PORTERVILLE DEVELOPMENTAL CENTER
1311740	PORTERVILLE UNIFIED SCHOOL DISTRICT
1303987	PPCIE, INC.
1288690	PRESS FORGE COMPANY
1296951	REED MECHANICAL SYSTEMS INC.
1309383	S & R TREE SERVICE
1200177	SAVE MART SUPERMARKETS
1247267	SHACK PLUMBING
1294847	SHEEHAN CONSTRUCTION INC
1311532	SKANSKA-TRAYLOR-SHEA, A JOINT VENTURE
1326135	SPLASH BROTHERS CARWASH, INC.
1333102	STATES LOGISTICS SERVICES, INC.
1286298	STREAMLINE DESIGN & SILKSCREEN, INC.
1334427	SURE - CLEAN
1298811	TALENT AIR INC
1324770	TAYYAB ALIM, AN INDIVIDUAL
1191276	THE GOODYEAR TIRE & RUBBER COMPANY
1273953	THE RESIDENCES AT ROYAL BELLINGHAM, INC.
1323872	THE SOCO GROUP, INC
1313606	TIMKEN GEARS AND SERVICES, INC.
1305507	TMC GENERAL CONSTRUCTION, INC.
1272589	TOTALMED STAFFING, INC.
1337686	TRIMAC MFG., INC.
1319292	TULARE SAG, INC.
1329166	V & E TREE SERVICE, INC.
1291092	V4 CUSTOM CABINETS, INC.
1142292	VENTURA REGIONAL SANITATION DISTRICT
1280749	VIDEO VOICE DATA COMMUNICATIONS, INC.
1322081	WARMERDAM PACKING

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1285403	WEBER METALS, INC.
1197149	WEHAH FARM, INC.
1301704	WEST WOOD PRODUCTS, INC.
1334338	WINDSOR GARDENS HEALTHCARE CENTER OF FULLERTON,
1270419	WOHLWEND CONSTRUCTION INC
1343621	WOOD WORLD CUSTOM DESIGN, INC.
1272361	ZUMWALT CONSTRUCTION, INC.

ACTION: Approved all Administrative Law Judge Orders.

Moved: Judith Freyman, Seconded: Ed Lowry

Vote: 2-0

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 10:54 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 10:55 a.m.